



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNR

For the landlord: MNDS, OPR, MNR, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for an order seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

The landlord applied for authority to retain the tenant's security deposit, a monetary order for unpaid rent and for money owed or compensation for damage or loss, an order of possession due to unpaid rent, and for recovery of the filing fee.

The landlord's agents (hereafter "landlord") attended the hearing; the tenant did not attend.

The landlord submitted that they served the tenant with the landlord's Application for Dispute Resolution and Notice of Hearing by registered mail on December 17, 2014. A copy of the registered mail receipt showing the tracking number was submitted by the landlord as proof of service to the tenant.

Based upon the submissions of the landlords, I find the tenant was served notice of the landlord's hearing and the landlord's application as required by section 89(1) of the Act and the hearing proceeded on the landlord's application in the tenant's absence.

Thereafter the landlords were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Procedural matter-Despite having her own application for dispute resolution set for hearing on this date and time, the application of the landlord and the Notice of these Hearings, the tenant did not appear.

Therefore, pursuant to section 10.1 of the Rules, I dismiss the application of the tenant, without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order, for authority to retain the tenant's security deposit, and to recover the filing fee?

Background and Evidence

The evidence provided by the landlord shows that this tenancy began on February 1, 2014, that the listed monthly rent in the written tenancy agreement was \$925, and that the tenant paid a security deposit of \$462.50 at the beginning of the tenancy.

The landlord provided further information that the tenant's monthly rent obligation was \$848, as she has been given a monthly rent credit of \$77 for the first year of the tenancy.

According to the landlord, they served the tenant was a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 3, 2014, by attaching it to the tenant's door, listing unpaid rent of \$265.42 as of December 1, 2014 and an effective move-out date of December 13, 2014.

A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date, December 13, 2014 is changed to December 16, 2014.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlords supplied evidence that since the Notice was issued to the tenant, there was a partial payment of \$150, and that their monetary claim is \$983.42, which includes \$35.42 for unpaid rent for December 2014, \$75 in fees for three months of late rent payments of \$25 each, loss of rent revenue for \$848 for January 2015, as the tenant has remained in the rental unit, and a late fee of \$25 for January 2015.

In response to my question, the landlord confirmed that the amount listed as unpaid rent on the Notice did include late fees of \$75.

The landlord also requests recovery of the filing fee of \$50.

Analysis

I find the landlords submitted sufficient evidence that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, did not pay the outstanding rent within 5 days of receiving the Notice and did not vacate the rental unit. Additionally the tenant did not appear at the hearing in support of her own application. I find the tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlords are entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

As to the landlord's monetary claim, I find the landlord has submitted sufficient evidence to show that the tenant owed outstanding rent of \$35.42 due for December 2014, and is entitled to a monetary award in that amount. I also have determined that the landlord is entitled to a monetary award of \$75 for late fees due to late payments during the tenancy, and they are granted a monetary award in that amount.

As to the landlord's request for loss of rent revenue for January 2015, I dismiss that claim of \$848, with leave to reapply, as the landlord confirmed that the rental unit is currently being advertised for rent, and the possibility exists that they will not lose revenue for the entire month; however, as the tenant has remained in the rental unit through at least the date of the hearing and not paid rent, I award the landlord a late fee for January 2015 in the amount of \$25.

I also grant the landlord recovery of their filing fee of \$50.

I therefore find that the landlord is entitled to a monetary award in the amount of \$185.42, comprised of outstanding rent of \$35.42 for December 2014, \$100 in total late fees through January 2015, and the \$50 filing fee paid by the landlord for this application.

Conclusion

The tenant's application is dismissed due to her failure to attend the hearing and as I have granted the landlord's application.

The landlord's application is granted in part.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision and should be served upon the tenant. Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

At the landlord's request, I allow the landlord to retain \$185.42 from the tenant's security deposit in satisfaction of their monetary award in that amount.

The landlord's monetary claim for loss of rent revenue for January 2015 is dismissed, with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 6, 2015

Residential Tenancy Branch

